CF 464

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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench

S.A. NO. 174 /2006

APPELLANT : Haricharan, S/o Jain Mangal
PLAINTIFF aged about 65 years, R/o Village Gurmuti, P.S. Basantpur, Tahsil Wadrafnagar, Distt. Sarguja (C.G.)

VERSUS

RESPONDENTS :1. Dudhnath, S/o Jaimangal,
Defendants Aged about 70 years,
2. Ram Lakhan, S/o Dudhnath
Aged about 45 years,
3. Heera Lal, S/o Dudhnath
Aged about 40 years,
4. Mohan S/o Dudhnath
aged about 34 years,
All R/o Village Gurmuti,
P.S.Basantpur, Tahsil Wadrafnagar
Distt. Sarguja (C.G.)
5. State of Chhattisgarh
Through Collector
Sarguja (C.G.)

R.R. No. 113/06
Presented by Shri M.T. Haidar
dated 21/4/06

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SECOND APPEAL U/S. 100 OF THE CODE OF CIVIL PROCEDURE

(3)

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HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL NO.174/2006

Haricharan

Vs.

Dudhnath and others

Appearance:

Shri D.N. Prajapati, counsel for the Appellant.

ORDER
(22.6.2006)

SUNIL KUMAR SINHA, J

(1) This is the plaintiff's second appeal u/s 100 of the Code of Civil Procedure, who lost in both the courts. The appeal is directed against the judgment and decree dated 28.2.2006 passed in Civil Appeal No.9-A/ 2005 by the 2nd Addl. District Judge (F.T.C), Ramanujganj, Distt. Sarguja, arising out of judgment dated 25.3.1998 passed in Civil Suit No.20-A/1996 by the Civil Judge, Class-I, Ramanujganj.

(2) The brief facts are that the plaintiff filed a suit for declaration of title, partition and separate possession in relation to the lands described in Schedule-A of the plaint. He *interalia* pleaded that the suit lands of Schedule-A were the joint property among the plaintiff and defendants. This property was purchased in an auction sale by the defendant no.1 on 24.5.2006 but the consideration of sale was paid out of the earnings of the joint family. He further pleaded that thereafter, there was a partition in their family and certain lands of Schedule-A were allotted in the share of the plaintiff. He also pleaded that in the year 1978, when the defendants tried to interfere with the possession of the plaintiff in his absolute property, which was allotted to his share in the said partition, the plaintiff filed a suit for permanent injunction which was dismissed and thereafter, an appeal against the said judgment and decree was also dismissed on 16th February 1996 and then only the defendants again took over the possession of the said lands. This gave rise to a cause of action to the plaintiff to file the instant suit for the above relief(s).

(3) The defendants filed their written statement denying the contentions of the plaintiff. It was pleaded by them that the suit lands were the self-acquired property of defendant no.1 as the defendant no.1 alone had purchased the same in the said auction sale and the consideration of the sale was also paid by him out of his own earnings. They further pleaded that an earlier civil suit bearing no.10-A/1986 on almost similar grounds was filed by the plaintiff, which was dismissed by the trial Court on 23.2.1988 and thereafter an appeal against the said judgment and decree was also dismissed and in this manner, the said judgment and decree became final and the present suit is barred by principles of *res-judicata*.

(4) The learned trial Judge framed various issues in this case and took the issue no.3 as preliminary issue. This issue was decided in favour of the defendants holding that the plaintiff's suit was barred by the principles of constructive *res judicata* as almost similar points were raised in the earlier civil suit which was dismissed by the judgment and decree, referred to above. Being aggrieved with the said judgment passed by the trial Court, the plaintiff filed an appeal before the lower appeal court. The lower appellate Court also took the same view and confirmed the judgment passed by the trial Court dismissing the appeal. It is against this judgment and decree, the plaintiff has filed this second appeal.

(5) Learned counsel for the appellant argues that the suit was not barred by the principles of *res-judicata* as the earlier suit was filed for a different property and a different relief than the present one. He indicated many circumstances in his favour.

(6) I have gone through the records of the two courts below. The judgment and decree of the earlier suit has been placed on record. In earlier suit, which was filed for a few plots of the present Schedule-A, the issue no.1-A was framed as to whether the plaintiff and defendants no.1 & 2 (same parties) had jointly purchased the said property in the auction sale ? The answer to this issue is that it was not jointly purchased by them and the reasoning is that the plaintiff could not establish that the aforesaid property was purchased by all the brothers. The other issues regarding payment of consideration and partition were also decided

against the plaintiff and ultimately, the aforesaid suit for permanent injunction was dismissed.

(7) After perusal of the earlier judgment and the present judgment, it would appear that the facts in issue in both the civil suits were similar and almost similar points between the same parties for the same property have been raised in the subsequent suit which have been decided in the former suit.

(8) Section 11 of the Code of Civil Procedure provides that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

(9) Relying on the decisions rendered in the matters of ***Nandlal Roy –Vs- Pramathanath Roy, AIR 1933 Cal.222 and Smt. Rajlaxmi Dasi – Vs- Vanmali Sen, AIR 1953 SC 33,*** it has been held by the M.P. High Court in the matter of ***Shivnarain Ramnarayan –Vs- Nagar Palika Parishad, Garoth and another, 1988 M.P.L.J. 475,*** that in order to consider whether a previous decision is *res judicata* or not, the substantial effect of what has been decided in the case should be considered. Rule of *res judicata* does not depend on the identity of the subject matter but it depends on the identity of issues. The test of *res judicata* is the identity of title in the two litigations and not the identity of the actual property involved in the case.

(10) As stated above, almost all the issues raised in the subsequent suit have been decided in the earlier suit. As far as suit lands are concerned, they are also similar except that some Khasra numbers, which were not the subject matter of the former suit, but were the part and parcel of the property purchased in auction sale, have also been added in the subsequent suit. This feature only does not change the identity of title or subject matter or actual fact in issue involved in both the cases. So far as the nature of relief is concerned, a camouflage of relief(s) claimed does not govern the applicability of principles of *res-*

judicata which is governed by the identity of issues along-with the other features provided in section 11 C.P.C. The Courts below have committed no error of law while dismissing the suit by applying the principles of *res-judicata.*

(11) In the opinion of this court, no substantial question of law for consideration is involved in this appeal. The appeal has no merits and the same is dismissed at the motion stage.

Sd/-
Sunil Kumar Sinha
Judge

Rao